

WEST VIRGINIA HAZARDOUS WASTE FACILITY SITING PROVISIONS

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Relevant Statutes and Regulations:

- G W. Va. Code § 22C-5-1 et seq.: "Commercial Hazardous Waste Management Facility Siting Act" (1994).
- G W. Va. Code § 22C-6-1 et seq.: "Hazardous Waste Facility Siting Approval" (1994).
- G Code of State Regulations Section 33-20-7.2: "Hazardous Waste Management Rule" (effective July 1, 1998).

Copies of the latest versions of the laws and rules are available at the following addresses:

- G For Laws:
Legislative Services
Capitol Building
1900 Kanawha Blvd. East
Charleston, W.Va. 25305
Phone: (304) 347-4800
Fax: (304) 347-4819

West Virginia Hazardous Waste Facility Siting Provisions

- G** For Rules:
Office of Secretary of State
Capitol Building
1900 Kanawha Blvd. East
Charleston, W. Va. 25305
Phone: (304) 558-6000
Fax: (304) 558-0900None.

Web Address for State Environmental Agency

- G** <http://www.dep.state.wv.us/> (The regulations are not available on the web site, but contact numbers are available)

Affected Facilities:

- G** Commercial hazardous waste management facilities, as defined below. These facilities are subject to siting approval from the Commercial Hazardous Waste Management Facility Siting Board as per *W. Va. Code* § 22C-5 and to the pre-siting public participation requirements as per *W. Va. Code* § 22C-6.
- G** Hazardous waste management facilities, as defined below, that dispose of greater than 10,000 tons of hazardous waste per year. These facilities are subject to the pre-siting public participation requirements in *W. Va. Code* § 22C-6.

Definitions of Facility Types:

- G** "Commercial hazardous waste management facility" means any hazardous waste treatment, storage or disposal facility which accepts hazardous waste, as identified or listed by the director of the division of environmental protection under article eighteen [*§ 22-18-1 et seq.*], chapter twenty-two of West Virginia's code, generated by sources other than the owner or operator of the facility and does not include an approved hazardous waste facility owned and operated by a person for the sole purpose of disposing of hazardous wastes created by that person or such person and other persons on a cost-sharing or nonprofit basis. [*W. Va. Code* §§ 22C-5-3(b) & 22C-6-2(6)]
- G** "Hazardous waste management facility" means any facility including land and structures, appurtenances, improvements and equipment used for the treatment, storage or disposal of hazardous wastes, which accepts hazardous waste for storage, treatment or disposal. For the purposes of *W. Va. Code* § 22C-5 and § 22C-6 Articles, it does not include: (i) Facilities for the treatment, storage or disposal of hazardous wastes used principally as fuels in an on-site production process; or (ii) facilities used exclusively for the pretreatment of wastes discharged directly to a publicly owned sewage treatment works. A facility may consist of one or more treatment, storage or disposal operational units. [*W. Va. Code* §§ 22C-5-3(c) & 22C-6-2(c)]

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WEST VIRGINIA Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
ADMINISTRATION			
STATE ADMINISTERING AGENCY			
see Independent Siting Board West			-The RCRA authorized state agency Virginia Division of Environmental Protection
THE INTERAGENCY COORDINATING COUNCIL			
No Provisions Found			
INDEPENDENT SITING BOARD			
Commercial Hazardous Waste Management Facility Siting Board (“the Board”).	NA	<i>[§ 22C-5-2(a)]</i>	A State Commercial Hazardous Waste Facility Siting Board (“the Board”) administers the procedures for which certificates of site approval (also known as approval certificates) are granted or denied.
The Board’s authority.	NA	<i>[§ 22C-5-4(j)]</i>	The Board may exercise all powers necessary or appropriate to carry out the purposes and duties of Article 22C-5 (“Commercial Hazardous Waste Management Facility Siting Act”), including the power to promulgate rules.

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WEST VIRGINIA Hazardous Waste Facility Siting Provisions

Topic	Stage ¹	State citation ²	Provision
Composition of the Board.	NA	[§ 22C-5-4(a)]	<p>The Board consists of nine members:</p> <ul style="list-style-type: none"> Ⓒ the Director of the WV Division of Environmental Protection who is a non-voting member ex officio; Ⓒ the Chief of the Office of Air Quality of the Division of Environmental Protection who is a non-voting member ex officio; Ⓒ two ad hoc members appointed by the county commission of the county in which the facility is or is proposed to be located and who are residents of said county; Ⓒ two permanent members, appointed by the Governor with the advice and consent of the Senate, who are representative of industries engaged in business in the State; and Ⓒ three permanent members, appointed by the Governor with the advice and consent of the Senate, who are representative of the public at large. <p>No two or more of the five permanent Board members appointed by the Governor may be from the same county.</p>
Length of term for Board members.	NA	[§ 22C-5-4(a)]	After the initial appointments (which vary from five to one years), the permanent appointments shall be for five year terms.
Compensation for the Board members' services.	NA	[§ 22C-5-4(b)]	Each member of the Board, other than the two members ex officio, shall be paid for his or her services on the Board, \$75.00 for each day that he or she is actually engaged in Board duties.
Board responsibilities -- Certificates of site approval for commercial hazardous waste management (HWM) facilities.	PA	[§ 22C-5-4(c)]	<p>No person may construct or commence construction of a commercial hazardous waste management (HWM) facility without first obtaining a certificate of site approval issued by the Board. For the purpose of § 22C-5-4, "construct" and "construction" mean:</p> <ul style="list-style-type: none"> Ⓒ with respect to new facilities, the significant alteration of a site to install permanent equipment or structures or the installation of permanent equipment or structures; Ⓒ with respect to existing facilities, the alteration or expansion of existing structures or facilities to include accommodation of hazardous waste, or expansion of more than 50% the area or capacity of an existing hazardous waste facility, or any change in design or process of a hazardous waste facility that will result in a substantially different type of facility.

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WEST VIRGINIA Hazardous Waste Facility Siting Provisions

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Board responsibilities -- Exceptions from the site approval procedures.	NA	[§ 22C-5-4(d)]	<p>Upon receiving written request from the owner or operator of the facility, the Board may allow, without going through the procedures of Article 22C-5, any changes in the facility which are designed:</p> <ul style="list-style-type: none"> Ⓒ to prevent a threat to human health or the environment because of an emergency situation; Ⓒ to comply with Federal or State laws and regulations; or Ⓒ to result in demonstrably safer or environmentally more acceptable processes.
Board responsibilities -- Completeness of application notification.	PA	[§ 22C-5-4(f) & (g)]	<ul style="list-style-type: none"> Ⓒ Sixty calendar days after the receipt of an application for certification of site approval, the Board shall mail written notice to the applicant as to whether or not such application is complete. Ⓒ When the application for certificate of site approval is complete, the Board shall notify the county commission in which the facility is or is proposed to be located. The county commission shall appoint the two ad hoc members of the Board within 30 days of receipt of such notice.
Board responsibilities -- Requests for further information.	PA	[§ 22C-5-4(i)]	<p>The Board may request further information of the applicant and will render a decision based upon the application and the record of the public hearing. The decision will</p> <ul style="list-style-type: none"> Ⓒ grant a certificate of site approval; Ⓒ deny it; or Ⓒ grant it upon such terms, conditions, and limitations as the Board deems appropriate. <p>The Board will base its decision upon the factors set forth in § 22C-5-4(e).</p>
Board responsibilities -- Notification of decision.	PA	[§ 22C-5-4(i)]	<p>The Board shall mail its written decision containing its findings and conclusions by certified mail to the applicant and to any requesting person on or before 60 calendar days after receipt by the Board of a complete record of the public hearing.</p>
Board responsibilities -- Pre-siting referendum.	PPA	[§ 22C-6-3(b)(3)]	<p>If the majority of those voting in the pre-siting referendum oppose the siting of a commercial HWM facility, then the application process stops. If the majority of those voting in the pre-siting referendum approve the siting of the facility, then the application process may proceed. An affirmative vote, however, is not binding on the Board, nor does it require the Board to grant a certificate of approval.</p>

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Applicant Responsibility -- Certificate of site approval application	PA	<i>[§ 22C-5-4(e)]</i>	<p>An application for certificate of site approval shall be submitted to the Board and shall consist of a copy of all hazardous waste permits, if any, and permit applications, if any, issued by or filed with any state permit-issuing authority pursuant to Article 22-18 and a written analysis with supporting documentation of the following:</p> <ul style="list-style-type: none"> C the nature of the probable environmental and economic impacts, including, but not limited to, specification of the predictable adverse effects on quality of natural environment, public health and safety, scenic, historic, cultural and recreation values, water and air quality, wildlife, property values, transportation networks, and an evaluation of measures to mitigate such adverse effects; C the nature of the environmental benefits likely to be derived from such facility, including the resultant decrease in reliance upon existing waste disposal facilities which do not comply with applicable laws and rules, and a reduction in fuel consumption and vehicle emissions related to long-distance transportation of hazardous waste; C the economic benefits likely to be derived from such facility, including, but not limited to, a reduction in existing costs for the disposal of hazardous waste, improvement to the State's ability to retain and attract business and industry due to predictable and stable waste disposal costs, and any economic benefits with may accrue to the municipality or county in which the facility is to be located.

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LOCAL COMMUNITY NEEDS AND INVOLVEMENT			
LOCAL REVIEW/INVOLVEMENT			
Certificate of site approval supersedes any local ordinance or regulation.	PA	[§ 22C-5-5]	A grant of an approval certificate shall supersede any local ordinance or regulation that is inconsistent with the terms of the approval certificate. Grant of an approval certificate does not preclude or excuse the applicant from the requirement to obtain approval or permits under Chapter 22C or other State or Federal laws.
OTHER AGENCY OR GOVERNMENTAL ENTITY INVOLVEMENT			
County commission -- Appointment of Board members.	NA	[§§ 22C-5-4(a) & 22C-5-4(f)]	The county commission of the county in which the proposed facility is to be located appoints two ad hoc members who are residents of said county to the Board within 30 days of notification that a complete application for certificate of site approval has been received.
Public referendum with respect to a proposed site.	PPA	[§ 22C-6-3(b)]	If a pre-siting notice to locate either a commercial HWM facility or a HWM facility which disposes of greater than 10,000 tons per year has been filed in accordance with § 22C-6-3(a), then a referendum vote is required upon either C the affirmative vote of the majority of the county commissioners, or C the written petition of registered voters residing in the county equal to not less than 15% of the number of votes cast within the county for governor at the preceding gubernatorial election. Such a referendum is not required for a HWM facility for which at least 90% of the capacity is designated for hazardous waste generated at the site of disposal.
Result of referendum--Commercial HWM facility.	PPA	[§ 22C-6-3(b)(3)]	If a majority of legal votes cast in the referendum oppose a commercial HWM facility, the county commission shall notify the Division of Environmental Protection and the Board of the result and the application process is halted. If the majority of legal votes are cast in favor of the siting of such facility in the county, then the application process continues through the Board for an approval certificate. The vote is not binding on nor does it require the Board to grant a certificate of site approval.

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Result of referendum--HWM facility that disposes greater than 10,000 tons per year.	PPA	[§ 22C-6-3(b)(3)]	If a majority of legal votes cast in the referendum is against a facility that disposes greater than 10,000 tons of hazardous waste per year, then the county commission shall notify the Division of Environmental Protection of the result. If the majority of legal votes are cast for the siting of such facility in the county, then the application process continues through the Division. The vote is not binding on nor does it require the Division to grant a permit.
COMPATIBILITY OF FACILITY SITE WITH LOCAL SOLID WASTE MANAGEMENT PLANS			
No provisions found.			
IMPACT OF FACILITY ON LOCAL LAND USE			
No provisions found.			

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PUBLIC PARTICIPATION			
The federal regulations regarding the public participation process for the permitting of hazardous waste (RCRA) facilities can be viewed at http://earth1.epa.gov/epacfr40/chapt-I.info/subch-D/40P0124.pdf within the Part 124 Procedures for Decisionmaking. (State regulations cannot be less stringent than the federal counterparts.)			
NOTIFICATION			
Pre-siting notice--commercial HWM facility or a HWM facility which disposes greater than 10,000 tons per year.	PPA	<i>[§ 22C-6-3(a)]</i>	An applicant for any commercial HWM facility or any HWM facility that disposes of greater 10,000 tons per annum shall file a pre-siting notice with the following entities: C the county or counties in which the facility is to be located or proposed; such notice shall be submitted on forms prescribed by the Board; C the Board; C the Division of Environmental Protection.
Pre-siting notice--county commission shall publish a legal advertisement.	PPA	<i>[§ 22C-6-3(b)]</i>	If a pre-siting notice to locate either a commercial HWM facility or a HWM facility which disposes greater than 10,000 tons per year has been filed, the county commission shall publish a Class II legal advertisement in a newspaper of general circulation in the counties wherein the HWM facility is to be located.
Completeness of application notice for approval certificate.	PA	<i>[§ 22C-5-4(g)]</i>	C Immediately upon determining that an application for a certificate of site approval is complete, the Board shall, at the applicant's expense, publish a notice in the State Register no later than 30 calendar days after the date of written notice of completeness. C Immediately upon determining that an application for certificate of site approval is complete, the Board shall direct the applicant to provide reasonable notice to the public which shall, at a minimum, include publication as a Class I-O legal advertisement in at least two newspapers having general circulation in the vicinity in which the proposed facility is to be located identifying C the proposed location; C type of facility and activities involved; C name of the permittee; and C the date, time, and place where the Board will convene a public hearing

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Board Responsibility -- Notification of Decision	PA	[§ 22C-5-4(i)]	The Board shall mail its written decision containing its findings and conclusions by certified mail to the applicant and to any requesting person on or before 60 calendar days after receipt by the Board of a complete record of the public hearing.
PUBLIC MEETING			
No provisions found.			
PUBLIC HEARINGS			
Public hearing -- date.	PA	[§ 22C-5-4(g)]	The Board sets a date for a public hearing which will commence within 60 days of the date of notice of completeness of an application for certificate of site approval.
Public hearing -- location.	PA	[§ 22C-5-4(h)]	The Board will conduct the public hearing in the county in which the facility is to be located and shall keep an accurate record of such proceeding by stenographic notes and characters or by mechanical or electronic means. Such proceedings shall be transcribed at the applicant's expense. The Board may accept both written and oral comments.
ADJUDICATORY HEARINGS			
No provisions found.			
OTHER TYPES OF PUBLIC PARTICIPATION			
Public referendum -- commercial HWM facility or a HWM facility which disposes greater than 10,000 tons per year in the county.	PPA	[§ 22C-6-3(b)]	<p>If a pre-siting notice to locate either a commercial HWM facility or a HWM facility which disposes of greater than 10,000 tons per year has been filed in accordance with § 22C-6-3(a), then a referendum vote is required upon either</p> <ul style="list-style-type: none"> ☐ the affirmative vote of the majority of the county commissioners, or ☐ the written petition of registered voters residing in the county equal to not less than 15% of the number of votes cast within the county for governor at the preceding gubernatorial election. <p>Such a referendum is not required for a HWM facility for which at least 90% of the capacity is designated for hazardous waste generated at the site of disposal.</p>

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Determination of the public referendum.	PPA	<i>[§ 22C-6-3(b) & (b)(1)]</i>	The referendum will determine whether it is the will of the voters of the county to locate a commercial HWM facility or a HWM facility which disposes greater than 10,000 tons per year in that county. The referendum shall be held at the next primary, general or other countywide election.
Report of public referendum.	PPA	<i>[§ 22C-6-3(b)(3)]</i>	If the majority of the legal votes cast in the public referendum is against the facility, the question may be submitted again in any subsequent election, however, the question may not be submitted until two years after the date of the previous referendum.
Judicial review -- right to this review.	PA	<i>[§ 22C-5-7(a) & (b)]</i>	Any person adversely affected by the Board's decision regarding siting of a commercial HWM facility is entitled to this review in the circuit court of Kanawha County or the circuit court of the county in which the facility is, or is proposed to be, located. Such an appeal for a review shall be filed with the court within 60 days of the date of the applicant's receipt of the Board's written decision. The review will be conducted by the court without a jury and will be upon the record made before the Board except that in cases of alleged irregularities in procedure before the Board that are not shown in the record, testimony thereon may be taken before the court. The court may hear oral arguments and require written briefs.
Judicial review--the court's decision.	PA	<i>[§ 22C-5-7(b) & (c)]</i>	<p>The court may affirm the order or decision of the Board or remand the case for further proceedings. It may reverse, vacate, or modify the order or decision of the Board if the substantial rights of the petitioner(s) have been prejudiced because the administrative findings, inferences, conclusions, decisions or order are:</p> <ul style="list-style-type: none"> Ⓒ in violation of constitutional or statutory provisions; Ⓒ in excess of the statutory authority or jurisdiction of the Board; Ⓒ made upon unlawful procedures; Ⓒ affected by other error of law; Ⓒ clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or Ⓒ arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. <p>The court's decision is final unless reversed, vacated or modified on appeal to the supreme court of appeals. The petition seeking such a review shall be filed with said supreme court of appeals within 90 days from the date of entry of the judgment of the circuit court.</p>

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SITING RESTRICTIONS AND PROHIBITIONS			
Federal siting restrictions and prohibitions can be viewed at http://www.epa.gov/epacfr40/chapt-I.info/subch-I/ by selecting “Part 264 (Updated 1997) - Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities”. The regulatory requirements are in Location Standards at 264.18 in the document. (State regulations cannot be less stringent than the federal counterparts.)			
SOIL AND WATER			
No provisions found.			
SEISMIC CONSIDERATIONS			
Placement of a facility over a fault	PA	§ 33-22-7.2	Portions of new facilities where treatment, storage, or disposal of hazardous waste will be conducted shall not be located within 61 meters of a fault which has had displacement in Holocene time. This requirement is the same as the Federal requirement at 40 CFR 264.18(a)(1).
FLOODING AND EROSION			
100-year floodplain restrictions	PA	§ 33-20	A facility in a 100-year floodplain shall be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood unless the owner or operator can demonstrate to the satisfaction of the Chief of the Office of Waste Management, Division of Environmental Protection, that the wastes can be safely removed before the floodwaters can reach the facility. This requirement is the same as the Federal requirement at 40 CFR 264.18(b).
AIR			
No provisions found.			

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DISTANCE LIMITATIONS/BUFFER ZONES			
Placement of a facility over a fault	PA	§ 33-20	<p>Portions of new facilities where treatment, storage, or disposal of hazardous waste will be conducted must not be located within 61 meters of a fault which has had displacement in Holocene time.</p> <p>This requirement is the same as the Federal requirement at 40 CFR 264.18(a)(1).</p>
OTHER HUMAN HEALTH CONSIDERATIONS			
No provisions found.			
ENVIRONMENTALLY SENSITIVE AREAS			
Endangered Species -- No provisions found.			
Critical Habitats -- No provisions found.			
Wetlands -- No provisions found.			
Wild, Scenic or Recreational Areas -- No provisions found.			
Approved Farmland Preservation Areas -- No provisions found.			
OTHER RESTRICTIONS			
Salt dome formations, salt bed formations, underground mines and caves.	PA	§33-20	<p>The Office of Waste Management, Division of Environmental Protection, prohibits the placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave.</p> <p>This requirement is the same as the Federal requirement at 40 CFR 264.18(c).</p>

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ENVIRONMENTAL JUSTICE CONSIDERATIONS			
No provisions found.			
ECONOMIC CRITERIA			
See related information in “Applicant Responsibility”			
OTHER CRITERIA			
No provisions found.			

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